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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of **AT&T CORP.** 295 North Maple Avenue Basking Ridge, NJ 70920 **Petitioner,** v. **SPRINT SPECTRUM, d/b/a SPRINT PCS** 6160 Sprint Parkway Overland Park, KS 66211 **Respondent.**	)	WT 01-316 File No. ______________

AT&T PETITION FOR DECLARATORY RULING

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Respondent.	)	

AT&T PETITION FOR DECLARATORY RULING

Pursuant to Sections 4(i) and 208 of the Communications Act ("Act"), 47 U.S.C. §§ 154(i), 208, Section 554(e) of the Administrative Procedure Act, 5 U.S.C. § 554(e), and Section 1.2 of the Commission's Rules, 47 C.F.R. § 1.2, Petitioner AT&T Corp. ("AT&T") brings this Petition for Declaratory Ruling against Respondent Sprint PCS ("Sprint PCS").

INTRODUCTION

This Petition for Declaratory Ruling is brought pursuant to a referral under the doctrine of primary jurisdiction by the United States District Court for the Western District of Missouri in *Sprint PCS v. AT&T Corp.*, Civil Action No. 4-00-00973-W-5 (W.D. Mo.). On July 24, 2001, the District Court referred two questions to the Commission for resolution. Those issues are:

(i) whether Sprint PCS may charge access fees to AT&T for access to the Sprint PCS wireless network; and

(ii) if so, whether Sprint PCS's charges for such services are reasonable.

See Sprint PCS v. AT&T Corp., Civil Action No. 4-00-00973-W-5, Order at 13 (W.D. Mo. July 24, 2001).[1]

AT&T's position is that access charge payments by IXCs to CMRS carriers are unwarranted and that the longstanding industry bill and keep compensation mechanism should remain intact whereby CMRS carriers recover their network costs from their end users. If the Commission nonetheless finds some compensation is due from IXCs, it should apply the TELRIC-based reciprocal compensation rates on a prospective basis only.

This dispute arose when Sprint PCS – at the time alone among CMRS providers – began demanding that AT&T pay switched access charges to Sprint PCS for interexchange traffic terminating to, or originating from, Sprint PCS end users. Although the prevailing industry practice among CMRS providers is that they do not assess access charges on IXCs, but rather recover their network costs from per-minute "air time" charges paid by wireless end users both when they place and when they receive interexchange calls, Sprint PCS claims that it should be allowed to impose switched access charges on IXCs.

This controversy presents the Commission with a stark choice. On the one hand, the Commission can choose to sanction the *de facto* "bill and keep" approach to IXC-CMRS interconnection that spontaneously arose in the industry and that has been the practice for

[1] The district court ordered AT&T to submit the issues to the Commission by August 24, 2001, and stayed the action until June 24, 2002. Pursuant to the Court's Order, AT&T promptly submitted materials regarding the dispute to the Enforcement Bureau. Following a status conference on August 28, 2001, the Enforcement Bureau contacted the parties and advised them that the issues should be presented to the Commission through a petition for declaratory ruling.

20 years, under which CMRS providers recover from their end users all the network costs incurred by the providers in terminating and originating interexchange calls. Because wireless services are vigorously competitive and end-user CMRS rates are unregulated, leaving this bill and keep system in place would enable both the Commission and the state commissions to avoid regulating both CMRS-IXC compensation arrangements as well as CMRS end-user rates, and would preserve the incentives end users have to select an efficient access provider. The prevailing bill and keep system is thus the most efficient and deregulatory compensation mechanism for IXC-CMRS interconnection.

If, on the other hand, the Commission were to permit Sprint PCS unilaterally to replace this bill and keep system with a system of access charges, it would necessarily trigger, both for the Commission and for every state commission, the duty to engage in pervasive regulation of CMRS carriers' access rates. As the Commission has now concluded in the context of CLEC switched access charges, the market for access is characterized by pervasive market failures that make it impossible for market forces to discipline access rates. Adoption of Sprint PCS's position would thus entail a significant step backwards – the repudiation of an effective deregulatory, market-based system of end-user charges that has thus far prevailed in the industry, and the institution of constant regulatory scrutiny by federal and state regulators to attempt to prevent the abuse that marks wireline access. To say the least, the shift Sprint PCS proposes from an unregulated market-based bill and keep approach to a scheme of necessarily regulated access charges would be wholly out of step with the deregulatory purposes of the 1996 Act, as well as with the Commission's overall objective of pursuing deregulatory market-based solutions whenever possible.

In this regard, the Commission has noted that, where bill and keep is efficient, it would expect that carriers would voluntarily utilize it.[2] The one segment of the telecommunications industry where parties have voluntarily implemented efficient bill and keep arrangements is the CMRS market.[3] It would be ironic, and unwarranted, for the Commission now to undermine the use of bill and keep in the one context in which it spontaneously arose.

Equally important, the Commission should reject Sprint PCS's attempt to reap a windfall at the expense of captive IXCs and their customers. In the twenty years since CMRS carriers began providing service, and until very recently, no CMRS carrier, other than Sprint PCS, has imposed switched access charges on IXCs, and even Sprint PCS only began seeking such payments in 1998. At the time that the CMRS carriers made their investments and built their networks, therefore, none of the carriers had a reasonable expectation that they would be able to collect access charges from IXCs. Permitting CMRS carriers now to collect access would thus constitute a wholly unjustified windfall.

If the Commission nevertheless concludes that CMRS carriers should be permitted to assess access charges on IXCs, the Commission should rule that a CMRS carrier may not charge IXCs more for access than the reciprocal compensation rates that the CMRS carrier is permitted by the state commission to charge the ILEC for the transport and termination of local exchange

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2 *See In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd. 15499, ¶ 1112 (1996) ("We find that, in certain circumstances, the advantages of bill-and-keep arrangements outweigh the disadvantages, but no party has convincingly explained why, in such circumstances, parties themselves would not agree to bill-and-keep arrangements. . . .") ("*Local Competition Order*"). *See also id.* ¶ 1118 ("We expect . . . that when it is economically efficient to do so, parties will adopt bill and keep arrangements in the negotiation process."; discussing LEC-CMRS interconnection).

3 *See*, *infra*, 10-12 & n.6. Sprint PCS's recent attempts to receive access charges, in addition to charging its own end users for termination are truly the exception that proves the rule: until

traffic. Moreover, because a ruling permitting CMRS carriers to charge for access would be a clear break with the historical prevailing practice, it would be both arbitrary and inequitable if the obligation to pay such charges were imposed on anything other than a prospective basis. Indeed, because such payments are not built into current IXC budgets, long distance rates would have to rise if IXCs were required to compensate wireless carriers.

BACKGROUND

In order to place these issues in their proper perspective, AT&T describes briefly (1) the historical development of access charges in the wireline context and the Commission's rejection of the possibility of relying on market forces to constrain such charges; (2) the characteristics of the wireless market that have made access charges unnecessary and the prevailing industry "bill and keep" practice; and (3) the history of this dispute.

I. Regulatory Background

A. The Development Of Access Charges In The Wireline Context And The Commission's Rejection Of The Possibility Of Relying On Market Forces To Constrain Such Charges.

1. Access Charges Prior To The Enactment of the Telecommunications Act of 1996. Access charges among wireline carriers emerged with the breakup of AT&T to address specific regulatory concerns, none of which exists in the wireless context. Prior to the divestiture by AT&T of the Bell Operating Companies ("BOCs"), "no formal system" of charges compensated the BOCs, as the local exchange carriers, for the network costs they incurred in originating or terminating long distance calls. *In the Matter of Access Charge Reform*, Sixth Report & Order, 15 FCC Rcd. 12962, ¶ 5 (2000) ("*CALLS Order*"), *aff'd in part, rev'd in part on other grounds*, *Texas Office of Public Util. Counsel v. FCC*, — F.3d —, —, 2001 WL 1042228

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very recently, every other wireless provider practiced bill-and-keep, as the majority still do today.

(5th Cir. Sept. 10, 2001). Instead, the pre-divestiture Bell System divided its revenues among its component entities through a "settlements" process, whereby a portion of AT&T's long distance revenues were transferred to the BOCs to fund the local telephony common plant which was used in the origination or termination of long distance calls. *Id.*

During this period, both the Bell System, as well as federal and state regulators, pursued a policy of maintaining artificially low end-user rates for basic local exchange services, rates that the Bell System maintained by having AT&T Long Lines charge long distance customers above-cost prices for long distance service, and then passing on a portion of the profits to the BOCs. At the same time, state public utility commissions consciously set artificially low caps on local exchange rates that prevented the Bell companies from recovering the full costs they incurred originating and terminating long distance calls from their end-user customers.

Following the breakup of AT&T, the Commission adopted access charges as a remedy to a specific problem: that of ensuring that alternative carriers would have access to the local systems operated through the BOCs, the Bell System's local subsidiaries. *Id.* ¶¶ 7-8. The Commission thus required the BOCs to file tariffs by which any IXC, not only AT&T, could purchase access to the BOCs' lines to provide long distance service. At the same time, in order to protect local exchange ratepayers from the "rate shock" that would have occurred if access were priced on a cost basis and local rates were raised to make up the lost revenues, the Commission and the state public utility commissions permitted the BOCs to tariff artificially high rates for interstate and intrastate access. Access charges thus replaced the Bell System's settlements process as a means of subsidizing local exchange services that were themselves not subject to competition and that were subject to artificial rate caps.

2. **Post-1996 Developments And The Regulatory Quagmire Created By The Access Charge System**. With the passage of the Telecommunications Act of 1996, Congress and the Commission correctly recognized that the development of efficient and competitive local exchange and long distance telecommunications markets required the abolition of implicit subsidies, and thus a reform of the access charge system. *Local Competition Order,* ¶ 8. Purportedly in keeping with the 1996 Act's deregulatory spirit, however, the Commission chose to put its trust in a "market-based approach" to the reduction and reform of access charges. The Commission thus decided to leave the access charges assessed by CLECs – the new wireline entrants into the local exchange market – completely unregulated, expressing the belief that IXCs would be able to use competitive market forces to force CLECs to charge reasonable rates for access. *See, e.g., In the Matter of Access Charge Reform*, Third Report & Order, 11 FCC Rcd. 21354, ¶¶ 272-73 (1996). Specifically, the Commission assumed optimistically that if a CLEC chose to charge an excessive rate for terminating access, IXCs would be able to influence the end user to select a different local carrier — thus encouraging CLECs to charge reasonable, cost-based rates. *Id.*

Unfortunately, experience has proved otherwise. Rather than charging competitive rates for access, CLECs, unconstrained by regulation, exploited their bottleneck control over access to their end users by charging excessive rates for access – rates that the Commission found were often many times higher even than the rates charged by the ILECs. *In the Matter of Access Charge Reform*, Seventh Report & Order, FCC 01-146, 16 FCC Rcd. 9923, ¶¶ 28-31 (2001) ("*CLEC Access Charge Order*"). As the Commission concluded in the *CLEC Access Charge Order* (¶ 31), CLECs are able to charge excessive rates for access because the "market" for access is characterized by a persistent and pervasive market failure: "although the end user chooses her access provider, she does not pay that provider's access charges." Because the IXC has no means of passing through access charges in a targeted fashion to the CLEC's end users, "the party causing the costs – the end user that chooses the high-priced LEC – has no incentive to minimize costs." *Id.* At the same time, access providers have every incentive to shift costs away from their end user customers – who have competitive alternatives – to IXCs, who have no choice but to use the end user's access provider if they are to be able to originate or terminate long distance calls to or from the end user. *Id.* ¶ 38. In short, in its recent order the Commission "now acknowledged that the market for access services does not appear to be ***structured*** in a manner that allows competition to discipline rates." *Id.* ¶ 32.

In addition to failing to discipline rate levels, reliance on market forces rather than regulation to limit access rates produced another consequence that the Commission deemed unacceptable. In order for even the most rudimentary market to function, the purchaser (here, the IXC) must have the ability to "say no," *i.e.*, to decline to purchase access services that the IXC believes are excessively priced. Accordingly, IXCs understandably responded to the efforts of certain CLECs to charge excessive access rates by "threaten[ing] to stop delivering traffic to, or accepting [traffic] from, [those] CLECs that they view as high-priced." *Id.* ¶ 24. The Commission, however, decided that on a prospective basis this consequence of relying on the market to limit access rates is unacceptable, because it might "threaten to compromise the ubiquity and seamlessness of the nation's telecommunications network and could result in customer confusion." *Id.*

Based on this experience, the Commission decided that it had no choice but to abandon its prior reliance on the market and instead regulate the CLECs' access rate levels. On a prospective basis, the Commission established a "benchmark" rate, which is the maximum rate that a CLEC can tariff for access on a going forward basis. *Id.* ¶ 54. Because the *CLEC Access Charge Order* did nothing to remedy damages caused to IXCs by virtue of the excessiveness of the access rates charged by CLECs in the past, the Commission has also been required to adjudicate complaints by IXCs against CLECs for refunds, concluding in a recent such case that the CLEC in question (BTI) had tariffed unlawfully high rates for access. *In the Matters of AT&T Corp. v. Business Telecom, Inc. & Sprint Communications Co. v. Business Telecom, Inc.*, Memorandum Opinion & Order, 16 FCC Rcd. 12312, ¶¶ 5, 44, 53-54, 58 (2001) ("*BTI Order*"). In so doing, the Commission reaffirmed its *CLEC Access Charge Order*'s conclusion "that the access market in which BTI participates is not truly competitive, and that CLECs, such as BTI, possess market power with respect to access to their end users." *Id.* ¶ 44.

The lesson learned from the CLEC access experience is a simple one: if the Commission is going to permit wireless carriers to charge for access, it will have no choice but to regulate those access rates. As the Commission has now recognized, where a carrier charges end users for service, but has the opportunity to determine its own rates for IXC access, that carrier will have both the incentive and the ability to abuse its power over its own end users in order to extract high rates from IXCs. Indeed, this is a fact well-acknowledged by Sprint PCS's parent, Sprint Corp., which was one of the main proponents of regulating CLECs' access rates.[4] The

[4] *See, e.g.*, Reply Comments of Sprint Corp., *In the Matter of Access Charge Reform*, CC Docket No. 95-262, at 9 (November 29, 1999) ("In that retail local service market, LECs – ILECS and CLECs alike – have every incentive to keep their retail charges as low as possible, and to exploit the access market, which they gain as a by-product of winning the end user's local business, as a source of funds to subsidize – or even give away – local service. The bottleneck power of the ILECs in the access market is controlled through regulation. There must be an equally effective, and easy-to-administer, check on the exercise of bottleneck power by CLECs."); Comments of Sprint Corp., *In the Matter of Access Charge Reform*, CC Docket No. 96-262, at 3-4 (October 29, 1999) ("ILECs and CLECs compete for end users, not for provision of switched access to IXCs, and have an economic incentive to exploit that bottleneck through higher, not lower, rates."); *id.* at 16-17 ("[A] CLEC business strategy predicated on high access charges can enable a CLEC to grow much more rapidly than would otherwise be the case: by

Commission's conclusion in the *CLEC Access Charge Order* (¶¶ 28, 30-31) is undoubtedly correct: market forces cannot be relied upon to discipline access rates, and any rule which permitted a carrier to assess access charges on an IXC would necessitate the creation of a system of rate regulation – regulation that the Commission has heretofore avoided in the case of wireless carriers.[5]

B. The Characteristics Of The Wireless Market That Have Made Access Charges Unnecessary And The Prevailing Industry "Bill And Keep" Practice.

In stark contrast to the historical emergence of access charges in the wireline context, the wireless market shares none of the characteristics that have justified the imposition of access charges on IXCs. It is therefore not surprising that the uniform industry practice prior to this dispute has been for wireless carriers to bill their own end users for usage of the wireless network and keep that revenue as full compensation for the costs incurred by the wireless carriers in terminating (and occasionally originating) long distance calls.

Unlike the wireline local exchange market, the market for end user wireless services is characterized by full and vigorous competition. *See In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993*, Sixth Report & Order, 16 FCC Rcd.

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charging high access rates, it can offer local services at below-ILEC prices and thus take market share from the ILEC much more rapidly than if it did not have the 'war chest' provided by high access charges."); *id.* at 17 ("CLECs have every incentive to compete for end users, but have no incentive to 'compete' for the provision of interstate access to IXCs."); *id.* at 18 ("The reason for this CLEC behavior is quite simple: a CLEC has as much of a bottleneck on access as does the largest of ILECs. Once a customer decides to take his or her local service from a particular LEC, that LEC automatically becomes the bottleneck for IXCs wishing to complete calls to, or receive calls from, that consumer."). *See also infra*, 22-23 & n. 11.

[5] Indeed, to avoid the burdens of regulating such arrangements, the Commission has recently suggested eliminating access payments altogether and replacing them with bill and keep arrangements even where a regime of access payments already exists. *See In the Matter of Developing a Unified Intercarrier Compensation Regime*, Notice of Proposed Rulemaking, 16 FCC Rcd. 9160, ¶ 4 (2001) ("*Intercarrier Compensation NPRM*").

13350, 13433 (2001) ("The past year has continued the positive trends of increased competition in the CMRS industry described in the *Fifth Report*. First, during 2000 mobile telephone subscribership climbed 23.5 million, to 109.5 million. . . . [A]ccording to the Bureau of Labor Statistics, the price of mobile telephone service fell by 12.3 percent."); *In the Matter of Regionet Wireless License, LLC*, Order, 15 FCC Rcd. 16119, ¶ 3 (2000) ("The CMRS marketplace . . . is substantially less regulated and more competitive than most telecommunications markets.") ("*Regionet Wireless Order*"). *See also AT&T Intercarrier Compensation Comments* at 54 & n.40 (filed August 21, 2001).

Because competition effectively disciplines end user wireless rates, those rates are unregulated. *See, e.g.*, *In the Matter of Year 2000 Biennial Regulatory Review—Amendment of Part 22 of the Commission's Rules to Modify or Eliminate Outdated Rules Affecting the Cellular Radiotelephone Service and Other Commercial Mobile Radio Services*, Notice of Proposed Rulemaking, 16 FCC Rcd. 11169, ¶ 60 (2001) ("Because of the competitive wireless environment, however, CMRS licensees are not subject to federal rate regulation and are not permitted to file tariffs with the Commission."); *Regionet Wireless Order* ¶ 3 ("The competitive nature of the CMRS market is due, in part, to the Commission's willingness to evaluate and, when appropriate, forbear from enforcing regulations or provisions of the Communications Act . . . that could stifle competition.").

Unlike the wireline local exchange market, where local exchange rates were historically kept low by regulators and access charges were alleged to be necessary to subsidize those rates and to permit wireline LECs to fully recover their network costs, no regulatory or market constraint prevents wireless carriers from recovering their full network costs from their end users. At the same time, the fact that end users of wireless services face so many competitive alternatives prevents wireless carriers from attempting to recover above-cost rates from their end user customers.

Significantly, these characteristics of the wireless marketplace not only make a bill and keep regime for wireless termination or origination of interexchange calls preferable as a matter of economic theory – bill and keep has in fact been the prevailing industry method by which wireless carriers for the last 20 years have recovered their costs of terminating and originating interexchange calls. Although wireless carriers began providing service in 1981, *see In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993*, Sixth Report, 16 FCC Rcd. 13350, 13360 (2001) ("The Commission began licensing commercial cellular providers in 1981.") ("*Sixth CMRS Competition Report*"), and Sprint PCS itself began providing service through predecessor entities in 1993, *see* http://www.sprint.com/sprint/ir/sd/sh.html (viewed October 16, 2001), no wireless carrier – not even Sprint PCS – imposed access charges on IXCs prior to 1998. Instead, those carriers were content to recover their costs through the ample "air time" charges they assess on their end users whenever the end user either receives or places a call.[6]

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[6] *See, e.g., In the Matter of Calling Party Pays Service Offering in the Commercial Mobile Radio Services*, Declaratory Ruling & Notice of Proposed Rulemaking, 14 FCC Rcd. 10861, ¶ 2 (1999) ("Today in the United States, the presubscribed customer of a CMRS provider—"the called party"—generally pays *all charges* associated with incoming calls.") (emphasis added); *In the Matter of Calling Party Pays Service Option in the Commercial Mobile Radio Services*, Notice of Inquiry, 12 FCC Rcd. 17693, ¶ 2 (1997) ("CMRS telephone consumers throughout the Nation typically pay on a per minute basis for all calls they initiate or receive. . . . A fundamental difference between wireline and wireless service is that currently a U.S. wireline telephone subscriber does not pay any additional charges to receive telephone calls, whereas most CMRS telephone subscribers pay a per minute charge to receive calls."); *In the Matter of Access Charge Reform Price Cap Performance Review for Local Exchange Carriers*, Notice of Proposed Rulemaking, 14 FCC Rcd. 12673, ¶ 275 (1996) ("We note that wireless companies already charge the called parties for receiving calls.").

In 1999, Sprint PCS – alone among wireless carriers – began sending invoices to AT&T demanding that AT&T pay access charges, and very recently a handful of other wireless carriers have likewise begun submitting bills to AT&T. Even today, however, the vast majority of wireless carriers, including AT&T Wireless, Cingular, Voicestream, Nextel and others, do not assess access charges, but rather abide by the industry's prevailing bill and keep system. Thus, while Sprint PCS has demanded that AT&T pay it for access, AT&T Wireless – even when it was a part of AT&T Corp. – did not charge Sprint's long distance affiliate for access on calls that AT&T Wireless originated to or terminated from Sprint's network. Accordingly – again in sharp contrast to the wireline context – wireless carriers have had no reasonable settled expectation of receiving access payments from IXCs that would stand as an obstacle to the ratification of the end-user-pays system towards which the Commission evidently would like to transition for intercarrier compensation generally.

II. History of This Dispute.

This dispute focuses on one central issue: whether a wireless carrier such as Sprint PCS should be permitted to charge a long distance company for delivering calls to, and terminating calls from, the long distance carrier. Because wireless carriers are statutorily exempted from equal access requirements,[7] Sprint PCS's end users have no choice but to rely on long distance services provided by Sprint. For this reason, virtually all of the calls at issue in this dispute are either (1) calls dialed by AT&T long distance customers terminating on Sprint PCS phones (these calls make up over 90% of the calls at issue); and (2) 8YY calls dialed by Sprint PCS

[7] 47 U.S.C. § 332(c)(8) ("A person engaged in the provision of commercial mobile services, insofar as such person is so engaged, shall not be required to provide equal access to common carriers for the provision of telephone toll services."); *In the Matter of Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, 11 FCC Rcd. 12456, ¶ 3 (1996) (acknowledging that Section 332(c)(8) prevents the Commission from "requir[ing] CMRS providers to offer equal access").

customers to AT&T 8YY customers.[8] In both cases, Sprint PCS has the exclusive customer relationship with the end user who selected Sprint PCS as its wireless access provider, and AT&T's customers will often have no idea that they are either calling, or receiving a call from, a Sprint PCS customer. *Cf.*, *CLEC Access Charge Order* ¶ 56 (applying same benchmark to terminating traffic and to originating 1-8YY traffic); *id.* ¶ 11 n.17 (noting "that in some cases, such as 800 or 888 service, the called party, which pays for the call, is unable to influence the calling party's choice of provider for originating access services").

Although Sprint PCS undoubtedly incurs costs in delivering calls to and from AT&T's network, Sprint PCS is compensated for the use of its wireless network through the "air time" charges its customers accrue on such calls. Nevertheless, Sprint PCS began in 1999 to demand compensation from AT&T in the form of "access charges" for the delivery of traffic to and from AT&T's network. Significantly, however, Sprint PCS does not allege that AT&T has entered into any written or oral contract with Sprint PCS that establishes a duty to compensate Sprint PCS at a particular rate. Sprint PCS does not claim (nor could it) that its rates are established by tariff. For its part, AT&T has repeatedly informed Sprint PCS that, consistent with "longstanding practice," the provisions of the Act, and this Commission's rules, Sprint PCS already receives all of the compensation to which it is entitled through the revenues it "collects and retains [] from its own customers as compensation for its network costs." *See, e.g.*, Letter from Judy Sello (AT&T) to Charles W. McKee (Sprint PCS), August 27, 1999 (Notice of Removal, Ex. B).

[8] It is also possible that Sprint PCS customers may have originated calls to the AT&T network by "dialing around" to AT&T via a 1010 access code. Because Sprint PCS customers purchase a bundles of minutes that includes long distance, only a trivial number of minutes is attributable to such usage.

On August 9, 2000, Sprint PCS filed in the Circuit Court of Jackson County, Missouri, a petition seeking money damages against AT&T Communications, Inc., on the ground that AT&T should be required to pay the "reasonable" value for access to Sprint PCS end users (either terminating AT&T phone calls or originating phone calls to AT&T 1-8YY numbers). *Sprint Spectrum, Inc. v. AT&T Communications, Inc.*, 00-CV-219410, Petition, ¶ 22 (Cir. Ct. Jackson City, Mo.) (Notice of Removal, Ex. A). Sprint's state court petition alleged that it is entitled to monetary compensation "for the value of AT&T's use of the Sprint PCS network," under either an implied-in-fact contract or an unjust enrichment theory. *Id.* Prayer for Relief. As such, each of the three counts plead by Sprint PCS – breach of implied contract, quantum meruit, and account claims – alleges that AT&T has incurred an implied obligation to compensate Sprint PCS for the value of the services it has received from Sprint. The petition neither acknowledged nor addressed the fact that Sprint PCS also charges its end users for termination and origination of the calls at issue in the petition.

AT&T was served on August 24, 2000 and timely removed the case to federal court.[9] Subsequently, in response to an AT&T primary jurisdiction motion, the federal court stayed the case and referred two issues to the Commission. *See Sprint Spectrum L.P. v. AT&T Corp.*, — F.3d —, 2001 WL 1231711, 00-0973-CV-W-5, Order (W.D. Mo. July 24, 2001) (attached as Ex. A). In doing so, the court rejected two Sprint PCS arguments. First, "Sprint argue[d] that its state law claims do not involve the Communications Act or require referral to the FCC." *Id.* at *9. However, as the court held, "it would perhaps be within [the court's] province to pass upon

[9] Sprint PCS moved for remand. The federal court denied the motion to remand on one of the grounds suggested by AT&T in opposition: namely, that Sprint PCS had named the wrong entity (AT&T Communications, Inc.) as a defendant and, with the correct defendant (AT&T Corp.) substituted as the defendant, diversity jurisdiction existed. *See Sprint Spectrum L.P. v. AT&T Communications, Inc.*, 00-0973-CV-W-5, Order (Feb. 8, 2001).

the question of whether such an implied contract exists, but the Court fails to see how Sprint may ultimately obtain any relief in this matter without a determination as to the reasonableness of the rates for Sprint's services that AT&T has utilized. . . . This is clearly a fact that must be proven and one which the FCC is in a better position than the Court to evaluate." *Id.* at *10. Second, the court determined that Sprint's claim "that the FCC has decided not to regulate the charges involved in this case, is based upon unconvincing authority." *Id.* at *12. Rather, the court held "that regulation of access charges by CMRS carriers is far from settled from the FCC's perspective at this time. Moreover, Sprint does not point to any affirmative position against regulating such charges." *Id.* at *13. Concluding that Sprint PCS's petition required resolution of core questions within the Commission's expertise, that a national resolution to that question was desirable, and that the Commission had not resolved this question, *id.* at *10-*11, *13, the court stayed the action and referred two questions to the Commission: "whether Sprint may charge access fees to AT&T for access to the Sprint PCS wireless network and, if so, the reasonableness of Sprint's charges for such services." *Id.* at *14-*15. The court limited the duration of the stay to ten months and announced its intention to resume the proceedings on June 24, 2002, if the Commission has not acted by that date. *Id.* at *15.

ARGUMENT

Sprint PCS's position is a simple one. Wireline LECs charge IXCs for access on calls, so, Sprint PCS claims, wireless carriers should likewise be able to charge IXCs for access. Sprint PCS thus would like the Commission to import the legacy access charge regime from the regulated wireline context to the unregulated wireless context.

But mere simplicity does not equal or imply accuracy. Sprint PCS's argument ignores both the significant regulatory and market differences between wireline and wireless services, as well as the lessons learned from the CLEC access experience. As discussed below, *see*, *infra*, Part I, the vigorous competitiveness of wireless services makes the existing bill and keep regime that has prevailed in the wireless context the most efficient and appropriate intercarrier compensation mechanism to follow in the case of CMRS-IXC interconnection. Permitting CMRS carriers to impose access charges on IXCs, by contrast, would require the Commission to take a tremendous step backward from achieving its deregulatory goals, because the likelihood of monopoly abuses and the potential for double recovery of costs or cross-subsidization of competitive activities by CMRS carriers would require regulation of CMRS access charges. *See, infra*, Part II. In short, the Commission should declare that CMRS carriers may not impose access charges and reaffirm the prevailing bill and keep regime that spontaneously arose from the unregulated operation of market forces in the IXC-CMRS context and which has been the prevailing industry practice for 20 years.

I. WIRELESS CARRIERS SHOULD CONTINUE TO RECOVER THEIR COSTS FROM THEIR END USERS, NOT BY IMPOSING ACCESS CHARGES ON CAPTIVE IXCS.

History teaches two important lessons relevant to the questions presented in this petition. First, in light of the different history and development of the wireline and wireless local exchange markets, access charges (and their attendant regulatory schemes) may be necessary and appropriate in the wireline context, but are completely inappropriate, and, at least until this dispute arose, essentially unprecedented in wireless markets. Second, the access charge regime is a quagmire that leads to the exploitation of captive IXCs and their customers and the need for the pervasive federal and state regulation that has until now successfully been avoided in the wireless industry. Accordingly, the Commission should ratify the *de facto* bill and keep regime that is the prevailing practice in the IXC-CMRS context, and should make clear that wireless carriers should recover their full network costs directly from their end users.

A. The Commission Should Maintain The Existing Bill And Keep Approach To Wireless Access.

As demonstrated above and as the Commission has tentatively concluded, *see supra*, 10 n.5, bill and keep is the economically optimal solution for a market which, unlike the current wireline local exhange market, is neither crippled by lack of competition over end users nor historically reliant upon a regulatory regime of access charges to subsidize particular policy goals. The reasons for the superiority of bill and keep regime over an access charge system for IXC-CMRS interconnection are straightforward. Because the rates charged by CMRS carriers to end users are not subject to any regulatory constraints and are not burdened by historical assumptions about whether certain services must be subsidized by rates from other services, nothing prevents CMRS carriers from recovering their full network costs from the rates they charge their end users.

The bill and keep system in the IXC-CMRS context likewise promotes efficient network utilization and carrier selection by ensuring that the correct economic signals will be sent. Because end users will bear the full economic costs of their selection of a high-priced access provider, end users will have an incentive to choose an efficient CMRS carrier. Similarly, if wireless service is in fact more costly to provide than wireline local exchange service – and Sprint PCS has not provided any evidence that supports such an allegation – requiring end users to bear the full costs of their selection of a CMRS carrier enables the end user to assess whether the added benefits of mobility justify the higher cost of the service.

Beyond replacing an efficient regime with an admittedly flawed one, permitting CMRS providers to charge IXCs for access will lead to a regulatory quagmire. As with CLEC-IXC interconnection, if the Commission were to accept Sprint PCS's argument that it should be permitted to impose access charges on IXCs, the inability of IXCs to use market forces to affect end users' choice of a CMRS carrier as an access provider, in combination with the futility of an IXC attempting to "negotiate" with a bottleneck monopolist carrier, would leave IXCs with no choice but to "threaten[] to stop delivering traffic to, or accepting it from, certain [carriers] that they view as over-priced." *CLEC Access Charge Order* ¶ 24. Yet, this is the precise consequence that the Commission deemed unacceptable in the CLEC access context. *See, supra,* 7-8.

B. None Of The Historical Justifications For Access Charges Applies To Wireless Traffic.

Sprint PCS's principal argument is that wireless carriers should be treated on par with wireline LECs: LECs charge IXCs for access, so CMRS providers should as well. Sprint PCS's argument, however, ignores the historical and regulatory reasons for the existence of the access charge system – none of which applies in the case of CMRS providers.

Access charges emerged in the landline context in large part as a means of subsidizing "certain basic services to customers in high-cost areas without having to charge these customers unaffordable rates." *CALLS Order* ¶ 21; *see also id.* ¶ 23 (showing that access charges subsidize high-cost services as a means of "implicit universal service support"). Prior to the enactment of the 1996 Act, because price constraints set by state regulators on local rates may have prevented LECs from recovering all of their network costs through end user charges, some form of IXC payments were deemed justified. *ISP Intercarrier Compensation Order* ¶ 88 & n.174.[10] The

[10] Now, of course, as the Fifth Circuit has held, *see COMSAT Corp. v. FCC*, 250 F.3d 931, 939 (5th Cir. 2001) (concluding that implicit subsidies, "whether on a permissive or mandatory basis" are barred under the 1996 Act); *Texas Office of Public Util. Counsel v. FCC*, 183 F.3d 393, 425 (5th Cir. 1999) ("We are convinced that the plain language of § 254(e) does not permit the FCC to maintain *any* implicit subsidies for universal service support."), *cert. dismissed*, 531 U.S. 975 (2000), all implicit subsidies must be removed from access charges and, per Section 254 of the Act, 47 U.S.C. § 254(e), recovered via an explicit universal service mechanism.

historical reliance of wireline LECs and regulators on access for subsidy purposes made it necessary for the Commission to confront the argument that some brief transition period from the use of access as a subsidy mechanism was necessary. By contrast, the wireless industry never relied on access payments in the pre-1996 Act period (or, indeed, at any time) to subsidize their end user services, and hence had no basis for relying on the existence of such payments in making their investments or in setting their end user rates. Accordingly, unlike in the wireline context, no historical or regulatory reason exists to justify imposing the legacy access regime in the wireless context.

Additionally, as this Commission has acknowledged, price caps set by state regulators on local rates may prevent LECs from recovering all of their network costs through end user charges, thus justifying some form of IXC payments. *ISP Intercarrier Compensation Order* ¶ 88 & n.174. This problem, however, does not exist in the *CMRS* context. No regulatory or public policy constraints prevent CMRS providers from recovering their full costs from their end users, and § 332(c) gives the Commission the power to ensure that a provider that engages in bill and keep (whether through choice or regulation) is fully able to continue to do what CMRS providers have long been doing: recover their full network costs from end users.

II. IF ACCESS CHARGES WERE TO BE ADOPTED IN THE WIRELESS CONTEXT, THOSE CHARGES SHOULD BE CAPPED AT THE RECIPROCAL COMPENSATION RATES SET BY STATE COMMISSIONS FOR THE TRANSPORT AND TERMINATION OF LOCAL TRAFFIC, AND THOSE CHARGES SHOULD BE ASSESSED ONLY PROSPECTIVELY.

As this petition makes plain, permitting CMRS providers to charge IXCs for access would be both inappropriate and affirmatively harmful to the Commission's deregulatory goals. Most fundamentally, if the Commission were to permit CMRS carriers to assess access charges on IXCs, those charges would have to be regulated to prevent wireless carriers from exploiting their terminating and originating access monopolies. In particular, if the Commission decides to permit CMRS carriers to impose access charges on IXCs, those charges should be capped at the TELRIC-based reciprocal compensation rate established by the state commission in the state in question for the transport and termination of local traffic. *See*, *infra*, Part II.A & B. Finally, because the prevailing bill and keep industry practice has meant that CMRS carriers have had ample opportunity to recover all of their costs in their end user rates – and IXCs have had no reason to expect that they would have to incur access charges on calls terminating to, or originating from, wireless carriers – it would be fundamentally unfair and wholly arbitrary if the obligation to pay such charges were imposed on anything other than a purely prospective basis. *See infra* Part II.C.

A. As The Commission Concluded In The CLEC Access Context, If The Commission Permits CMRS Carriers To Assess Access Charges, Those Charges Would Have To Be Regulated.

If the Commission were to permit CMRS providers to charge IXCs for access, that decision would in turn necessitate regulation of the CMRS carriers' access rates. As the Commission concluded with respect to CLEC access, market forces cannot discipline access rates. "Since the IXCs are effectively unable either to pass through access charges to their end users or to create other incentives for end users to choose LECs with low access rates, the party causing the costs – the end user that chooses the high-priced LEC – has no incentive to minimize costs." *CLEC Access Charge Order*, ¶ 31. This is inevitable given the nature of the monopoly power that CMRS providers have over their end users and given the incentive that CMRS providers would have to shift both the costs of innovation and of inefficiency to IXCs and away from their end user customers. Indeed, "[t]he Commission has previously noted the unique difficulties presented by the case of terminating access, where the called party is the one that chooses the access provider, but it neither pays for terminating access service, nor does it pay for, or choose to place, the call." *CLEC Access Charge Order* ¶ 28. Because "the market for access does not appear to be ***structured*** in a manner that allows competition to discipline rates," *id.* ¶ 32, the Commission would have no alternative but to ensure that CMRS access charges are subject to regulation.

Indeed, Sprint PCS's parent was a leading advocate of the need to regulate CLEC access rates – arguments that the Commission accepted. In particular, Sprint PCS's parent consistently argued that market forces alone cannot resolve the problems caused when a carrier has the "ability to control bottleneck facilities, which the IXCs must access to serve their customers, to impose unjust and unreasonable rates for interstate services." Reply Brief of Sprint Corporation, *Sprint Communications L.P. v. Business Telecom, Inc.*, File No. EB-01-MD-002, at 7 (April 9, 2001).[11] Sprint also acknowledged that "'each terminating carrier, no matter how small, has a monopoly over termination to its own customers.'" *Id.* at 8 (quoting DeGraba, *Bill and Keep at*

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[11] *See also* Comments of Sprint Communications Co. L.P., *Sprint Communications Co. v. Business Telecom, Inc.*, File No. EB-01-MD-002, at 15 (April 2, 2001) (stating that, because CLECs "control bottleneck facilities which the IXCs *must* access to serve their customers," market forces cannot prevent such carriers from abusing their monopoly powers in assessing IXC access charges); *id.* at 16 ("The practical effect of this bottleneck control is that, in the IXC-to-CLEC relationship, market forces do not act to constrain the CLEC from charging uncompetitive prices. . . . As a result of their unequal bargaining power, IXCs faced with uncompetitively priced CLEC access service are confronted with the no-win choice of refusing the higher-priced CLEC's access service, resulting in a narrower customer base, a public relations loss and a loss of potential revenues, or accepting the CLEC's uncompetitively-priced access service and paying a premium that represents a subsidy to the CLEC and an economically inefficient loss of revenues to the IXC."); Formal Complaint of Sprint Communications Co. against Business Telecom, Inc., File No. EB-01-MD-002, ¶ 15 (January 12, 2001) (explaining that "CLECs have market power over exchange access to and from their end users" and noting that "[n]otwithstanding the Commission's characterization of BTI and other new entrants into the local market as 'competitive' LECs, and notwithstanding the Commission's classification of such carriers as non-dominant, BTI has the very same bottleneck, vis-à-vis long-distance carriers, as do the major ILECs, such as Verizon and SBC. Whenever a Sprint long distance customer is a CLEC residential or small business local service subscriber, or a Sprint long distance customer places a call to such a CLEC subscriber, Sprint is as dependent upon the CLEC for access to that customer or called party as it is in the case of a subscriber of the largest ILEC.").

the Central Office As the Efficient Interconnection Regime, OPP Working Paper No. 33 at 7 (Dec. 2000)). Thus, as Sprint has argued:

> With respect to CLEC access charges, CLECs – despite their miniscule share of the local service and exchange access market – have every bit as much bottleneck power over exchange access to and from their end users as does an ILEC that has provided local service on a monopoly basis for a hundred years. . . . Like any other bottleneck, the Commission must regulate CLEC access in some fashion.

Comments of Sprint Corp., *In the Matter of Access Charge Reform*, CC Docket No. 96-262, at 4-5 (October 29, 1999). The Commission accepted these arguments in both the *CLEC Access Charge Order* (¶¶ 38-44) and the *BTI Order* (¶¶ 53-59). Under Sprint's, and the Commission's, logic, "[l]ike any other bottleneck," CMRS access charges, if instituted, "must be regulated in some fashion by the Commission." Comments of Sprint Corp., *In the Matter of Access Charge Reform*, CC Docket No. 96-262, at 4-5.

If CMRS providers are permitted to recover a portion of their costs from IXCs, two concerns will immediately be raised. First, the Commission would need to ensure that CMRS providers are not achieving double recovery of costs, *i.e.*, from both their terminating end users, and from the IXCs (and, ultimately, from the IXCs' originating end users). Second, the Commission would need to ensure that CMRS providers are not using their monopolistic bottleneck control over access to their end users to subsidize their competitive activities by assessing low-cost end user charges which are underwritten by exorbitant IXC fees.[12] Preventing such harmful acts would require the Commission to do what it has never done: regulate CMRS rates.

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[12] This case illustrates the validity of these concerns. While Sprint PCS has sought "reasonable" compensation for termination of calls routed from AT&T, its pleadings are devoid of acknowledgement that it, like other wireless carriers, charges its users for termination.

Predictably, the regulation that would be necessitated if the Commission were to permit CMRS carriers to assess access charges would pose particularly intractable difficulties, because the vast majority of the costs incurred by a local carrier in terminating long distance calls are common. As the Commission has recognized, regulating intercarrier interconnection charges requires that these "common costs [] be allocated among the [] various services" provided by the carrier over its network. *In the Matter of Developing a Unified Intercarrier Compensation Regime*, Notice of Proposed Rulemaking, 16 FCC Rcd. 9160, ¶ 39 (2001) ("*Intercarrier Compensation NPRM*"). "There is no perfect solution to these cost allocation problems, largely because regulators cannot know how benefits are distributed between the parties. That is, regulators cannot see individuals' demand functions." *Id.* For this reason, "any allocation that a regulator can make is arbitrary . . ., yet even a small allocation error can produce massive distortions." *Id.* Because of the competitive and unregulated nature of the wireless market, by contrast, a bill and keep approach makes it possible for regulators to avoid these difficulties.

B. If CMRS Carriers Are Permitted To Assess Access Charges, Those Charges Should Be Capped At The Reciprocal Compensation Rates Established By The State Commissions Pursuant To The Commission's TELRIC Rules.

As the Commission concluded in the *Local Competition Order*, in a competitive market carriers set their rates based on the long run incremental cost of providing the service in question. For this reason, rates based on TELRIC best replicate the prices that would be charged by carriers subject to competitive market pressures, and best ensure an efficient utilization of the service in question. Notably, promoting efficient network usage is one of the primary justifications for the Commission's decision to apply TELRIC. *Local Competition Order* ¶ 672 (emphasizing that "the prices that potential entrants pay for these [unbundled] elements should reflect forward-looking economic costs in order to encourage efficient levels of investment and entry."). TELRIC succeeds in promoting such efficiency because TELRIC-based rates use as their benchmark "the most efficient technology deployed in the incumbent LEC's current wire center locations." *Id.* ¶ 685. As such, "[t]his benchmark of forward-looking cost and existing network design most closely represents the incremental costs that incumbents actually expect to incur in making network elements available to new entrants." *Id.* Thus, TELRIC requires a carrier either to internalize any costs that are inefficient or to adjust its end user prices – thus, giving proper pricing signals to consumers.

The Commission deliberately chose TELRIC as a mechanism to ensure that carriers received "normal" profits—but not "economic profits."[13] TELRIC-based rates thus allow a carrier to recover the economic costs of providing termination or origination for other carriers, without permitting carriers to accrue economic profits. *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, Order, 11 FCC Rcd. 11754, ¶ 10 (1996) ("[O]ur pricing methodology does not require "below-cost" pricing. On the contrary, [it] affirmatively provides for the recovery of all the economic costs of providing interconnection and unbundled network elements, and includes a reasonable profit."). Thus, cost-based rates neither reward nor penalize a carrier for providing termination and transport. In the absence of bill and keep – truly the optimal regime in the wireless context – TELRIC will create the proper incentives for market entrants to select the appropriate technology that will permit them to maximize their profits by offering attractive services while minimizing the costs of providing service to telecommunications customers throughout the country.

[13] *Local Competition Order* ¶ 699 (distinguishing between "normal" profits, which TELRIC provides, and "economic profits," which TELRIC does not include: "We note there are two types of profit. First, in plain English, profit is defined as 'the excess of returns over expenditure in a transaction or a series of transactions.' This is also known as a 'normal' profit, which is the total revenue to cover all of the costs of a firm, including its opportunity costs. Second, there is 'economic' profit, which is any return in excess of normal profit. . . . Economic is also referred to as 'supranormal profit.'") (quoting *Webster's New Collegiate Dictionary* 931 (10th ed. 1994) & David W. Pearce, The MIT Dictionary of Modern Economics at 310, 415 (1994)).

For this reason, the Commission should conclude that, if CMRS carriers are permitted to assess access charges, those charges should be limited to the TELRIC-calculated costs of providing access. Indeed, use of a TELRIC methodology is particularly appropriate in the case of access provided by wireless carriers, because the wireless end user market is in fact competitive. It would be quite strange if wireless carriers who charge competitive rates for their end user services would be permitted to recover supranormal profits from access.

Sprint PCS has itself appeared to admit that it would have no right to charge more than a TELRIC-calculated rate for access. In its correspondence to AT&T that preceded the filing of the lawsuit that led to this referral, as well as in the status conference held by the Enforcement Bureau in this case, Sprint PCS alleged that its access rates were in fact based on its costs – a fact that AT&T strongly disputes. *See* Letter from Charles W. McKee (Sprint PCS) to Christine Jordan (AT&T), August 13, 1999 (attached as Ex. B).

Fortunately, the Commission itself would not have to conduct a TELRIC rate case in order to set CMRS carriers' rates at a TELRIC-based level.[14] As the Commission has previously found, "transport and termination of traffic, whether it originates locally or from a distant exchange, involves the same network functions." *Local Competition Order* ¶ 1033. Moreover, the Commission's rules already require the state commissions to establish the reciprocal compensation rates for the transport and termination of local exchange traffic using a TELRIC methodology. Accordingly, to ensure that CMRS carriers charge no more than a TELRIC-based rate, the Commission need simply make clear that CMRS carriers cannot charge IXCs more for access than they charge the predominant ILEC in the state for terminating local exchange traffic.

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[14] Of course, if the Commission desires to conduct such a rate case, it has authority to do so under Section 332(c).

Limiting CMRS carrier access rates to the levels those carriers charge the ILEC for transporting and terminating local exchange traffic is particularly appropriate given the Commission's decision to give CMRS carriers the right to seek asymmetrical reciprocal compensation rates from state commissions. *In re: Cost-Based Terminating Compensation for CMRS Providers*, Letter to Charles McKee, 16 FCC Rcd. 9597 (2001); *Intercarrier Compensation NPRM* ¶ 104 (describing asymmetrical reciprocal compensation rules). If, as Sprint PCS alleges, CMRS carriers in fact incur higher costs in terminating interexchange calls than efficient wireline providers, those carriers should be able to prove that fact to the state commission in a TELRIC rate case against the incumbent LEC. *Id.*

Finally, unlike wireline carriers who typically do not receive any additional compensation from their end user customers when the customer places or receives an interexchange call, CMRS carriers such as Sprint PCS assess per-minute "air time" charges on their end users for use of the network, even on calls that the user receives. Accordingly, to prevent double recovery, the Commission should make clear that it is the CMRS carrier's burden to establish to the state commission not only the carrier's TELRIC-based costs of terminating and originating interexchange traffic, but also that the CMRS carrier does not already recover those costs (or a portion of those costs) from its end users.

C. If The Commission Decides To Permit CMRS Carriers To Assess Access Charges on IXCs, It Should Make Clear That Such Charges May Only Be Assessed Prospectively.

For years the prevailing industry practice among CMRS carriers has been to employ a *de facto* bill and keep relationship with IXCs, whereby those carriers recovered the costs they incurred originating and terminating interexchange calls solely from their end users. Until very recently, Sprint PCS was the only carrier claiming that IXCs should pay access charges to it, and even today the great majority of wireless carriers do not assess access charges on IXCs. Given this history, if the Commission decides to shift from a bill and keep approach to one in which CMRS carriers are permitted to assess access charges on IXCs, fundamental fairness dictates that the Commission make clear that such charges may be assessed only prospectively.

Because the prevailing practice with regard to CMRS-IXC interconnection has been bill and keep, IXCs such as AT&T have had no reason to expect that when they terminated calls to, or originated calls from, CMRS carriers they would incur the obligation to pay access charges to such carriers. Thus, the long distance rates that the IXCs charged their end users were set at levels that did not reflect an obligation to pay access to CMRS carriers, and it is too late now for IXCs to attempt to recover such charges retroactively from their end users.[15]

It would be thus patently unfair if the Commission were not only to permit wireless carriers to assess access charges on IXCs, but also to require AT&T to pay such charges retroactively for periods prior to the Commission's issuance of its declaratory ruling in this case. Indeed, the charges Sprint PCS claims AT&T owes Sprint PCS for access already amount to over $60 million, and this amount could reach $100 million by the time the Commission issues its ruling. Therefore, if the Commission decides to approve of Sprint PCS's attempt to change industry practice with regard to compensating CMRS providers for terminating and originating interexchange calls, that change should be implemented only prospectively.

[15] For the same reason, IXCs also had no reason to consider taking steps, such as blocking, to avoid incurring such payment obligations.

CONCLUSION

For all of these reasons, AT&T requests that the Commission issue a declaratory ruling that CMRS providers may not charge IXCs for access. If the Commission declines to adopt that conclusion, AT&T requests that the Commission limit any such access charges for CMRS-IXC interconnection to no more than the amount that the state commission in the state in question permits the CMRS carrier to charge for the transport and termination of local exchange traffic, predicated on a showing by the CMRS carrier that it is not already recovering these costs through end-user charges. Finally, the Commission should make clear that CMRS carriers may assess such charges solely on a prospective basis.

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